United States Department of Labor
Employees' Compensation Appeals Board

V.H., Appellant	)	
and	)	**Docket No. 10-960**
	)	**Issued: May 3, 2010**
U.S. POSTAL SERVICE, POST OFFICE, Trenton, NJ, Employer	)	

Appearances:
Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On June 16, 2009 appellant, through her attorney, filed a timely appeal of the Office of Workers' Compensation Programs' merit decisions dated March 19 and May 18, 2009. Pursuant to 20 C.F.R. §§ 501.2 and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant has additional medical conditions as a result of her July 3, 2006 employment injury; and (2) whether appellant sustained a recurrence of disability on November 19, 2007.

FACTUAL HISTORY

On July 3, 2006 appellant, then a 58-year-old city letter carrier, sustained injury when she fell on her knees and face while in the performance of duty. She visited the emergency room that day and a physician identified as Dr. Ruth reported that she fell at work landing on both knees and hitting her face on concrete. Dr. Ruth diagnosed tooth fracture, facial contusion and abrasion and bilateral knee contusions. Appellant accepted a limited-duty assignment on

August 1, 2006. On September 7, 2006 the Office accepted her claim for sprain of the right hand, contusion of the lip and a right thumb sprain. At the time of appellant's July 3, 2006 employment injury she was working in a limited-duty position due to July 27, 2002 employment injury.[1] Her duties included casing mail, driving a pivot out to carriers, delivering express mail and delivering mounted and cluster box routes.

Dr. Shar E. Diamond, an employing establishment physician, examined appellant on August 29, 2006 and diagnosed bilateral knee contusion and effusion with degenerative joint disease of the knees. She first examined appellant on July 5, 2006 and indicated with a checkmark "yes" that her condition was aggravated by her employment activity. Dr. Ronald Krasnick, a Board-certified orthopedic surgeon, completed a form report on August 12, 2006 and diagnosed degenerative joint disease of the knees aggravated by a fall at work on July 3, 2006. On October 3, 2006 appellant stated that her hand and both knees where reinjured on July 3, 2006. She requested bilateral knee replacement. In a letter dated October 12, 2006, the Office requested a narrative report with rationalized medical opinion explaining how appellant's condition was related to her injury.

Appellant filed a notice of recurrence of disability on March 10, 2008 alleging that she sustained a recurrence of disability on July 13, 2007 due to her July 3, 2006 employment injury. She stopped work on November 19, 2007. On July 12, 2007 appellant went to bed at 11:30 p.m. and awoke at 1:15 a.m. with excessive pain in her knees and could not feel her lower legs. She stated that the employing establishment withdrew her limited-duty assignment on November 19, 2007. The Office requested additional factual and medical evidence by letter dated April 15, 2008.

By decision dated April 15, 2008, the Office denied the expansion of appellant's claim to include aggravation of bilateral knee osteoarthritis.

By decision dated June 10, 2008, the Office denied appellant's claim for a recurrence of disability on July 13, 2007, finding that she failed to submit sufficient medical evidence.

Appellant, through her attorney, requested an oral hearing on June 16, 2008 which was held on December 2, 2008. She described injury on March 25, 2003 and did not return to full duty. Appellant stated that her knee condition worsened after the 2006 injury. She testified that the employing establishment removed her light-duty position in November 2007 on the grounds that she was no longer disabled based on the denial of her 2002 injury. Appellant returned to work on May 5, 2008 at a light-duty position.

By decision dated March 19, 2009, the hearing representative denied appellant's recurrence of disability claim and found that the employing establishment did not withdraw a light-duty position made specifically to accommodate her restrictions as a result of the July 3, 2006 employment injury. Appellant had been working in this limited-duty position since her 2002 work injury. The hearing representative further found that there was no evidence that appellant's July 2007 recurrence of disability was due to the accepted employment injuries as the Office had not accepted a knee condition as causally related to her July 2006 employment injury.

[1] This case has a companion case, Docket No. 09-1725, which addresses this claim.

On March 16, 2009 appellant, through her attorney, requested reconsideration of the April 15, 2008 and March 19, 2009 decisions. In a report dated February 19, 2009, Dr. Krasnick listed her employment injuries and stated that she sustained direct knee trauma on July 27, 2002, March 25, 2003 and July 3, 2006. He found that appellant was disabled and diagnosed progressive tricompartmental arthrosis. In an addendum to this report, Dr. Krasnick stated that her disabilities related to the July 3, 2006 employment incident.

By decision dated May 18, 2009, the Office denied modification of its prior decisions.

LEGAL PRECEDENT -- ISSUE 1

The Office's regulations define a traumatic injury as a condition of the body caused by a specific event or incident or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected.[2] In order to determine whether an employee sustained a traumatic injury in the performance of duty, the Office begins with an analysis of whether "fact of injury" has been established. Generally, fact of injury consists of two components that must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident that is alleged to have occurred. The second component is whether the employment incident caused a personal injury. Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence.[3]

ANALYSIS -- ISSUE 1

Appellant sustained a fall on July 3, 2006. She sought medical treatment on the same date and the emergency room notes diagnosed bilateral knee contusions and tooth fracture. Dr. Diamond, an employing establishment physician, examined appellant on August 29, 2006 and diagnosed bilateral knee contusion. The Office accepted her claim for sprain of right hand, contusion of lip and right thumb sprain.

The Office accepted that the employment incident occurred on July 3, 2006, as alleged, however, it did not accept all the conditions supported by the medical evidence as resulting from the fall. As the medical evidence including the contemporaneous emergency room notes and an employing establishment physician, support that appellant sustained bilateral knee contusions as well as a tooth fracture, the Office should have accepted these limited conditions as arising from appellant's July 3, 2006 employment injury.

The Board further finds, however, that appellant has not submitted the necessary medical opinion evidence to establish that an aggravation of her underlying condition of knee degenerative joint disease resulted from the July 3, 2006 employment injury. While Dr. Diamond diagnosed this condition as resulting from appellant's July 3, 2006 injury, she did not provide any medical reasoning in support of this diagnosis. She merely indicated with a

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[2] 20 C.F.R. § 10.5(ee).

[3] *Steven S. Saleh*, 55 ECAB 169, 171-72 (2003).

checkmark "yes" that appellant's condition were due to her employment. The Board has held that an opinion on causal relationship which consists only of a physician checking "yes" to a medical form report question on whether the claimant's condition was related to the history given is of little probative value. Without any explanation or rationale for the conclusion reached, such a report is insufficient to establish causal relationship.[4]

Appellant also submitted a report and addendum dated February 19, 2009 from Dr. Krasnick, a Board-certified orthopedic surgeon, listing her employment injuries and stating that she sustained direct knee trauma on July 27, 2002, March 25, 2003 and July 3, 2006. Dr. Krasnick diagnosed progressive tricompartmental arthrosis and stated that her current knee disabilities related to the July 3, 2006 employment incident. He did not provide any medical reasoning supporting his opinion. Dr. Krasnick did not explain why he believed that appellant's knee contusions on July 3, 2006 were sufficient to permanently aggravate her underlying degenerative joint disease of the knees. Without this medical rationale, his reports are not sufficient to meet appellant's burden of proof.

The Board finds that appellant sustained a tooth fracture and bilateral knee contusions as a result of her July 3, 2006 employment injury. Appellant has not established that her degenerative joint disease of the knees was aggravated by the July 3, 2006 injury.

LEGAL PRECEDENT -- ISSUE 2

A recurrence of disability is the inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment which caused the illness. The term also means an inability to work that takes place when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his or her work-related injury or illness is withdrawn (except when such withdrawal occurs for reasons of misconduct, nonperformance of job duties or a reduction-in-force) or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.[5] When an employee who is disabled from the job she held when injured on account of employment-related residuals returns to a limited-duty position or the medical evidence of record establishes that she can perform the limited-duty position, the employee has the burden of establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability and to show that she cannot perform such limited-duty work. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the limited-duty job requirements.[6]

[4] *Lucrecia M. Nielson*, 41 ECAB 583, 594 (1991).

[5] 20 C.F.R. § 10.5(x).

[6] *Joseph D. Duncan*, 54 ECAB 471, 472 (2003); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

ANALYSIS -- ISSUE 2

Appellant has alleged that she sustained a change in the nature and extent of her injury-related condition on July 13, 2007. She further alleged that the employing establishment improperly removed her light-duty job on November 19, 2007.

Appellant has not submitted medical evidence in support of a change in her injury-related condition on July 13, 2007. While she submitted a narrative statement and testified that her condition spontaneous worsened on or after July 13, 2007, she has not submitted a medical report consistent with her assertions. The Board will not require the Office to pay compensation for disability in the absence of any medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.[7] As appellant has not submitted medical evidence supporting that she sustained a change in the nature and extent of her injury-related condition on or after July 13, 2007, she has not met her burden of proof and the Office properly denied her claim.

In regard to appellant's claim that the employing establishment improperly withdrew her light-duty position on November 19, 2007, the Board notes that the record does not clearly indicate whether her light-duty position on November 19, 2007 was due to her July 3, 2006 employment injury or the July 27, 2002 employment injury. The employing establishment offered appellant the same position on August 1, 2006 as she had previously been performing due to July 27, 2002 employment injury. It is unclear why the employing establishment withdrew appellant's light-duty job assignment based on the record currently before the Board. On remand, the Office should undertake additional development of appellant's claim[8] and ascertain whether she required light-duty work due to her accepted employment injuries on November 19, 2007, the date the employing establishment changed her light-duty position. After this and such other development as the Office deems necessary, the Office should issue an appropriate decision on this issue.

CONCLUSION

The Board finds that appellant's July 3, 2006 claim should be accepted for a tooth fracture and contusion of her knees. The Board finds that appellant has not established that the July 3, 2006 injury aggravated the degenerative joint disease of her knees. The Board further finds that the she failed to establish a recurrence of disability on July 13, 2007 and that the case is not in posture for a decision on the issue of whether she sustained a recurrence of disability on November 19, 2007 due to the removal of her light-duty job assignment.

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[7] *William A. Archer* 55 ECAB 674, 679 (2004).

[8] The Board suggests that as claim file numbers xxxxxx364 and xxxxxx553 both address appellant's bilateral knees, as found in this decision, the claims should be combined in order for the Office to fully address the alleged recurrence of disability on November 19, 2007.

ORDER

IT IS HEREBY ORDERED THAT May 18 and March 19, 2009 decisions of the Office of Workers' Compensation Programs are set aside and the case is remanded for further development consistent with this decision of the Board.

Issued: May 3, 2010
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board